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RM-7986

REPLY COMMENTS OF DIAL PAGE, L.P.
IN OPPOSITION TO PETITION FOR RULEMAKING

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Summary

The comments submitted on NABER's proposal to grant exclusive use of the 929 MHz PCP frequencies confirms Dial Page's view that adoption of NABER's proposal would be contrary to the public interest. The proposal will not facilitate the migration of existing PCP carriers from the lower bands to the 900 MHz band. Rather, adoption of that proposal will make unavailable spectrum which is needed for expansion of existing carrier's systems and future growth of the industry. Other important regulatory issues would also be raised by the NABER proposal, including the likelihood of warehousing and speculation, and the need for the Commission to conduct an integrated review of the status of private carrier paging and common carrier paging.

The few comments supporting the NABER proposal largely ignore the problems which the opposing commenters raised. Moreover, their rationale for urging the Commission to adopt the proposal is simply unconvincing. They have not shown that spectrum efficiency will be measurably enhanced by eliminating sharing, and they have not shown that PCP carriers are currently either unable to provide or substantially hindered in providing wide-area service using shared frequencies. Accordingly, the Commission should deny NABER's rulemaking petition.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUN 25 1992

Federal Communications Commission
Office of the Secretary

In re)
)
Amendment of Section 90.494) RM-7986
of the Commission's Rules)
and Regulation concerning)
shared use of 900 MHz)
Paging Frequencies)

To: The Commission

**REPLY COMMENTS OF DIAL PAGE, L.P.
IN OPPOSITION TO PETITION FOR RULEMAKING**

Dial Page, L.P. ("Dial Page"), by its attorneys and pursuant to Rule Section 1.401 et seq., submits its comments in reply to the comments submitted on the Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc.'s ("NABER") above captioned petition for rulemaking, and shows the following:

I. The comments of record support denial of NABER's proposal.

1. Fourteen parties, including Dial Page, filed comments in this proceeding. Review of the comments filed reinforces Dial Page's conclusion that it would be unadvisable for the Commission to institute exclusive use of 900 MHz private carrier paging ("PCP") frequencies. In this connection, Dial Page believes it significant that only three carriers filed comments in support of NABER's petition. Of those three, two, Paging Network, Inc. ("Pagenet") and PacTel Paging ("PacTel") stand to reap an immediate windfall from NABER's proposal, if adopted, via the nationwide award of three of the 40 900 MHz PCP frequencies, two (929.2875 MHz and 929.5625 MHz) to Pagenet and one (929.9375 MHz)

to PacTel).^{1/} It can easily be seen that only a few large carriers will benefit from NABER's proposal, and many small carriers will suffer from being unable to expand their systems.

2. Indeed, should the Commission determine to award exclusive use of the 900 MHz frequencies, the Commission can be certain that within weeks after the revised rules become effective, in the top 50 MSAs no 900 MHz PCP frequencies will be left. As a result, there will be no spectrum available either to relieve overcrowding in the lower bands or for the future expansion needs of PCP carriers.^{2/}

A. Parties filing opposition comments raise substantial questions concerning the efficacy of NABER's proposal.

3. As several small PCP carriers have observed, rather than encouraging PCP carriers to migrate from the crowded lower bands, NABER's proposal is likely to block entry and deter investment in 929 MHz channel systems. Rather than encourage these operations to migrate to the 929 MHz channels, these commenters see the NABER proposal as likely to limit the

^{1/} Although technically the rules allocate 20 PCP frequencies and 20 private noncommercial use frequencies, the Commission has upon a showing of need, allowed use of certain of the noncommercial frequencies for PCP use. Dial Page has no doubt that adoption of NABER's proposal will result in not only the 20 PCP channels being quickly gobbled up, but also the remaining 20 noncommercial channels as well.

^{2/} Dial Page sees as one of the unfortunate byproducts of adoption of NABER's proposal a fire sale consolidation of the PCP industry as smaller carriers, frozen out of spectrum by the Pagenets and PacTels, have no alternative but to sell out at bargain prices to these megacarriers.

availability of existing shared channels to those operators who already operate on those channels.^{3/}

4. In addition to the several smaller carriers which filed comments in opposition to NABER's proposals, Mobile Telecommunication Technologies Corporation ("Mtel") filed extensive opposition comments. The Mtel comments raise several important considerations of which the Commission should take note. Among the important observations Mtel makes, are:

- (a) that immediately upon adoption of NABER's proposal, six of the 40 929 MHz channels would immediately be set aside for the exclusive use of six carriers;
- (b) that NABER makes no reconciliation of its plan with the need to insure spectrum availability for: (1) migration of lower band systems to 929 MHz; (2) expansion of growth of existing facilities; or (3) non-PCP private system users;
- (c) that NABER does not address opportunities for warehousing, speculation and other abuses likely to result from NABER's proposal;
- (d) that NABER's petition is ill-timed in light of the Commission's current proceeding related to the release of the 930-931 MHz reserved spectrum; and
- (e) that NABER's petition raises a renewed need for the Commission to take an integrated look at the legal and public policy considerations applicable to RCCs and PCPs.

Mtel Comments at 2-4. These issues are each matters of important public interest and concern which the Commission must resolve

^{3/} See Comments of Ralph C. Messer (June 16, 1992); Comments of Telephone Equipment Co. (June 15, 1991); Comments of Dannelly Communications (June 16, 1992); Comments of Personal Page, Inc. (June 16, 1992); Comments of J. W. Groome (June 16, 1992); Comments of South Central Communications Corporation (June 16, 1992); Comments of Travis Carrol (June 12, 1992); Comments of John Babcock (June 15, 1992); Comments of Fone Page, Inc. (June 11, 1992).

prior to taking any favorable action on NABER's petition. And in Dial Page's view the most significant of these observations, from a public interest perspective, is the likelihood of speculation and warehousing that will result from adoption of the NABER proposal.

5. As Dial Page set forth in its opening comments, the history of licensing of the 37 local common carrier paging channels in the 931 MHz band aptly illustrates what is likely to happen with the 929 MHz frequencies. With those frequencies, there was a land-rush of applications, motivated largely by speculation rather than regard for public service. The Commission's records fully document the lack of available 931 MHz paging channels in all of the major market areas of the country. And monitoring of many of those frequencies shows that while they are licensed and presumably constructed they simply are not in use.^{4/} Rather, they are being held by licensees for no reason other than speculation, the hope being that they can be sold at some point in the future to licensees which need those channels for expansion or growth of their paging systems.

As Dial Page's comments warned, what happened with those frequencies is equally likely to happen to the 929 MHz frequencies as well if the Commission grants exclusivity on them.

^{4/} Dial Page believes it would be appropriate for the Commission's Field Operations Bureau to conduct a monitoring operation in selected major markets to confirm the current warehousing of 931 MHz common carrier spectrum. The Commission should defer any action on NABER's petition pending the results of that study.

If this valuable spectrum is gobbled up in speculation, it will be unavailable for some lengthy time to carriers actually intending to provide PCP service, and that service will, in turn, be unavailable, or restricted, to the public which needs that service.

B. Those parties supporting NABER's proposal largely ignore the myriad of problems which it would cause.

6. Despite the importance of the issues raised by Mtel and the other parties commenting in opposition to NABER's rulemaking petition, the parties which commented in support of the petition, largely fail to address these issues. Of the three parties which commented in favor of the proposal, one, Dial-A-Page did nevertheless recognize several aspects of the proposal which are problematic. They include the concern that it is basically unfair to award exclusivity on the 929 MHz channels, while still requiring sharing on the lower channels, and that the proposed automatic nationwide protection proposal, is likely to remove the bulk of spectrum from PCP use. See Dial-A-Page, Inc. Comments at 3-5. That commenter also noted the inherent unfairness of the automatic award, suggesting that the Commission ought to hold a specific proceeding to determine the extent of need for a nationwide allocation, if any, and allow all interested parties to file for such nationwide channels after appropriate public notice. Id. at 5.

7. Pagenet, however, which filed the most extensive comments in support of the proposal, totally ignores the myriad of problems with NABER's rulemaking petition. Instead, Pagenet

argues several points which it asserts supports award of exclusivity of operations on the 929 MHz frequencies. Analysis of Pagenet's comment's, however, indicates that it -- as with the petition for rulemaking itself -- does not made a sufficient case for adopting the NABER proposal.^{5/}

8. For example, while asserting that adoption of the NABER proposal will promote the continued growth and development of 929 MHz PCP paging systems and prevent channel sharing problems it asserts have developed on frequencies below 900 MHz, Pagenet never addresses the question that if the situation is so bad in the PCP frequencies below 900, how the NABER proposal will remedy those problems. This is for a good reason because the NABER proposal is neither designed to, nor is it likely to, remedy any problems which have developed on the lower frequencies. What it will do, however, is to leave those channels as congested as they may now be, and take away current usable spectrum which is available in case future congestion and saturation occur.^{6/} The

^{5/} While the PacTel comments are by no means a mirror image of Pagenet's, PacTel really does not address any substantive point which Pagenet fails to cover. Since Pagenet filed much more extensive comments, Dial Page will respond herewith to the points as Pagenet makes them. That response is equally applicable, however, to PacTel's more truncated comments.

^{6/} If as Pagenet says the demand for spectrum is greater than the supply in many areas, see Pagenet Comments at 5, Dial Page fails to see how awarding exclusive frequencies will solve this problem. Rather, it promises to make it a worse problem because it will limit the available frequencies which PCP carriers could use to deliver service. Thus, if current PCP service on the lower channels suffers from delays in delivery of pages, and low signal quality, as Pagenet asserts (and which Dial Page disputes), nothing in
(continued...)

result, of course, will be to give exclusive PCP channel holders, such as Pagenet, a competitive advantage with respect to existing lower band PCP providers. This may very well be what Pagenet wants, but Dial Page questions whether it is appropriate for the Commission to favor Pagenet with such a grant of market power.^{1/}

9. In this connection, Pagenet spends a great deal of time arguing that frequency sharing is inherently spectrally inefficient, with the result that it limits the number of customers which can be served and thereby drives up the cost of their facilities as PCP providers must split the cost of providing service over a smaller customer base. Implicit in Pagenet's argument is the assumption that channel sharing acts as a real world limitation on the physical number of users a PCP provider can serve. It is significant, however, that Pagenet never says it has been unable to provide service to any user because of limitations resulting from channel sharing. If that were the case, Dial Page would expect that Pagenet would have

^{6/} (...continued)

the NABER proposal is going to remedy that problem since all the NABER proposal will do is to award exclusive frequency rights to parties such as Pagenet, leaving current 152 MHz and 460 MHz users in an even worse place than they are now.

^{1/} As we discuss infra, it is apparent that what Pagenet really wants (see Pagenet Comments at 15-17) is the advantage a common carrier licensee may have of exclusive frequencies, but with none of the disadvantages of common carrier regulation from either this Commission or state public service commissions. To be honest, Dial Page would like that too, only it does not believe that such action would be fair either to the existing common carrier regulaties or the lower band PCP licensees who would be placed at a regulatory disadvantage by the NABER proposal.

said it. If a PCP provider serves 100 customers, it serves that many customers regardless of whether it uses a shared channel or not. Only if a carrier serves an extremely large number of users, is it likely that it would run up against channel congestion. That perhaps might be a problem for a megacarrier, such as Pagenet, but it is certainly not the case with the overwhelming number of PCP carriers.^{8/}

10. In a related argument, Pagenet asserts that frequency sharing puts PCP carriers at an economic disadvantage because there are fewer subscribers over whom to spread the cost of the necessary facilities. Again, however, that argument assumes falsely that sharing actually results in limiting, from a real world perspective, the number of subscribers receiving service. Moreover, if in fact PCP carriers are placed at a disadvantage by

^{8/} Although Pagenet strongly urges that frequency exclusivity is necessary to (1) encourage the development of wide area systems; (2) increase the number of pagers a frequency can accommodate; (3) and facilitate fully loaded systems, we find it telling that Pagenet, as well as PacTel, Pagemart and other companies seem not to have been deterred by channel sharing in developing 300 plus transmitter PCP systems currently on the 929 MHz PCP channels. That these successful companies have been able to do this, and have been tellingly silent as to any problems they have had in doing so, speaks loudly to the fact that the system is both working and working well. Given that Pagenet has built out two 300 plus transmitter systems already, Dial Page finds it hard to accept Pagenet's assertion that PCP carriers, like itself, have been reluctant to fully build out their systems. See Pagenet Comments at 13.

such a situation, nothing stops them from also sharing transmitting facilities to reduce cost.^{2/}

11. Dial Page also takes issue with Pagenet's suggestion that continued frequency sharing will inhibit the development of spectrally efficient technological innovations. Even assuming arguendo that a carrier on a PCP frequency has no incentive to develop spectrally efficient innovations, as Pagenet admits, the bulk of spectrum is allocated on an exclusive basis. Thus, the universe of paging and cellular common carriers, SMRS operators, and other spectrum users have every incentive to develop spectrally efficient methods of using the spectrum. There is no reason to believe these will not be readily transferable to PCP system. In any event, Dial Page disagrees that the sharing of spectrum gives carriers the incentive not to efficiently use that spectrum. If, as Pagenet suggests, a shortage of spectrum exists, with congestion and concomitant service problems, PCP carriers have a clear and compelling economic incentive to develop innovations to solve those problems, not to let them fester.

^{2/} This is done by each carrier interconnecting their paging terminal to a "superterminal," which in turn is connected to the transmitting facilities. Such a method of sharing a frequency, by definition, avoids both transmission and interference problems since only one transmitter in a given area transmits at a time. This method, of course, also avoids any problem which might be encountered in trying to implement the European Radio Messaging System ("ERMES") which Pagenet discusses, and which in any event has very questionable application to paging. Other, similarly creative sharing strategies are available if carriers need to implement them to make sharing work.

12. Finally, at pages 16-17 of its comments, Pagenet gets to what apparently is a compelling motivation behind its support of the NABER proposal. Pagenet points out the principal distinction between common carriers and PCP's, that distinction being that common carriers receive an exclusive allocation of spectrum.^{10/} What Pagenet fails to discuss, but which Mtel's comments make clear, is that there are significant regulatory advantages which PCP carriers receive vis-a-vis common carriers. They include less onerous and more rapid licensing, the absence of state certification and rate regulation, a lower schedule of forfeitures, the absence of the application of Section 310's alien ownership prohibition, and the absence of Title II regulation. Pagenet asks the Commission to remove the one last significant distinction between common carriers and private carriers, so in essence the private carriers are free to do anything that common carriers may do, and be subject to none of the restrictions or public service obligations.^{11/} Dial Page

^{10/} Pagenet's statement of the law is not exactly correct. Common carriers receive interference protection of their spectrum. Except for those paging carriers who specifically received grant of nationwide paging applications, no common carrier has exclusive rights to its spectrum nationwide as the NABER rulemaking petition asks the Commission to implement.

^{11/} Pagenet asserts that in North Carolina and Georgia, 99 percent of the territory is certificated and closed to additional entry by common carriers. Even assuming this is true, it has not stopped the development of wide area paging systems by PCP operators. At least five such carriers and Dial Page currently operate wide area PCP systems in the Carolinas and Georgia. They are: Network USA, Signet, Morris Communications, Beeper One and Pagenet. Thus, the
(continued...)

agrees with Mtel that if the Commission is leaning toward such action, it ought to fully explore the regulatory significance of such an action in an appropriate proceeding looking to ensure that there will be a level playing field between PCP and common carriers.

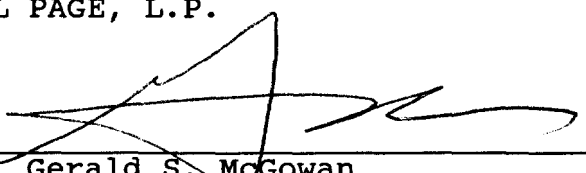
II. Conclusion.

13. The comments submitted in this proceeding clearly point out the need for the Commission to insure that adequate spectrum is available for the future growth and development of PCP service. Those comments do not support a conclusion that adoption of NABER's proposal for exclusive use of the 929 MHz PCP channels is the appropriate or effective method of achieving those goals. Accordingly, Dial Page requests that the Commission deny the rulemaking petition.

Respectfully submitted,

DIAL PAGE, L.P.

By


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June 25, 1992

11/ (...continued)

lack of exclusivity does not prevent the operation of wide area networks.

CERTIFICATE OF SERVICE

I, Lydia N. Hicks, Secretary, at the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, certify that true copies of the foregoing document were sent this 25th day of June 1992, via first class mail, postage prepaid to the following:

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